

REMARKS

The present application was filed on June 6, 2000 with claims 1-17. Claims 1-17 are currently pending in the application. Claims 1, 16 and 17 are the independent claims.

In the Office Action, the Examiner rejected claims 1-7 and 15-17 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,532,088 (hereinafter "Dantu"), rejected claims 8-13 under 35 U.S.C. §103(a) as being unpatentable over Dantu in view of U.S. Patent Application Publication No. 2001/0003833 (hereinafter "Tomizawa"), and rejected claim 14 under §103(a) as being unpatentable over Dantu and Tomizawa in view of U.S. Patent Application Publication No. 2001/0026384 (hereinafter "Sakano").

In this response, Applicants traverse the §102(e) and §103(a) rejections, and amend claims 1, 5, 6, 9-11, 16 and 17.

The specification has been amended to update related application information and to correct minor errors of a typographical nature.

Applicants respectfully request reconsideration of the present application in view of the following remarks.

Applicants initially note that the §102(e) rejection is improper on its face for failing to provide a clear disposition for dependent claim 6. As noted above, the Examiner rejects dependent claim 6 under §102(e) over Dantu. However, at page 3, last line, to page 4, line 12 of the Office Action, the Examiner acknowledges that Dantu does not disclose the limitations of claim 6. Therefore, the §102(e) rejection of dependent claim 6 is improper and should be withdrawn. Moreover, in view of the improper rejection, any subsequent Office Action should be indicated as having a non-final status, so that Applicants can have a reasonable opportunity to respond to a proper rejection of dependent claim 6.

Applicants also note with regard to the §102(e) rejection that the Manual of Patent Examining Procedure (MPEP), Eight Edition, August 2001, §2131, specifies that a given claim is anticipated "only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, MPEP §2131 indicates that the cited reference must show the "identical invention . . . in as complete detail as is

contained in the . . . claim,” citing Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). For the reasons identified below, Applicants submit that the Examiner has failed to establish anticipation of at least independent claims 1, 16 and 17 by the Dantu reference.

Independent claim 1 is directed to a method of routing traffic between first and second nodes in a network so as to provide protection against network failures. This claim includes, among other limitations, a step of routing units of traffic on corresponding sets of trunks connected between the first and second nodes such that the traffic is balanced between disjoint paths. Illustrative examples of such disjoint path routing are shown in FIGS. 3, 4 and 5 of the drawings, and described in the corresponding text at page 6, line 1, to page 8, line 27, of the specification.

The Examiner in formulating the §102(e) rejection over Dantu argues that the claimed disjoint path routing is shown in Dantu. Applicants respectfully disagree. The Dantu reference makes no reference whatsoever to disjoint path routing of the type claimed. In fact, it appears that the word “disjoint” is not utilized anywhere in the Dantu reference, based on a computer scan of an electronic HTML version available from the USPTO web site.

Since Dantu fails to meet at least the limitations of claim 1 regarding disjoint path routing, claim 1 is not anticipated by Dantu.

Independent claims 16 and 17 each include limitations similar to those of claim 1 as described above, and are therefore believed allowable over Dantu for substantially the same reasons that claim 1 is believed allowable over Dantu.

Dependent claims 2-15 are believed allowable at least by virtue of their dependence from independent claim 1.

Applicants further submit that the Tomizawa and Sakano references fail to supplement the fundamental deficiency of Dantu as applied to claim 1. The §103(a) rejections are therefore believed to be improper and should be withdrawn.

Notwithstanding the foregoing traversal, Applicants have amended independent claims 1, 16 and 17 to further clarify the disjoint path routing limitations of these claims. Each of these claims as amended specifies that a given one of the units of traffic is routed such that at least first and second portions of the given unit of traffic are routed on respective first and second trunks of a

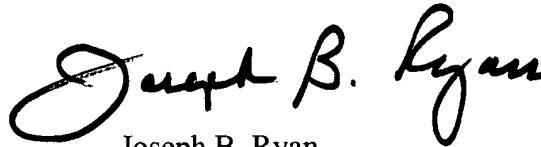
corresponding set of trunks, the traffic in the given unit of traffic thereby being balanced between at least a pair of disjoint paths comprising the first and second trunks.

Dependent claims 5, 6 and 9-11 have been amended to provide consistency with the amendments to independent claim 1.

In view of the above traversal, Applicants submit that the present claim amendments are made solely for purposes of expediting prosecution of the application, and not for any reasons relating to patentability of the claims relative to Dantu or the other art of record.

Accordingly, Applicants respectfully submit that claims 1-17 as presented herein are in condition for allowance.

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph B. Ryan". The signature is written in a cursive, flowing style with a large initial "J" and a long, sweeping underline.

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